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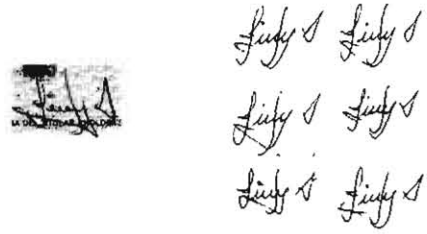

Passports are subjected to many forms of alteration for the purposes of misrepresentation. An important passport identification feature is the bearer signature panel. If there no physical evidence of panel substitution or alteration of this area then a signature comparison may be requested for the purpose of authentication. However, unlike other questioned signature cases, it has been our experience at the United States Immigration and Naturalization Service Laboratory to find the forged or simulated signatures, not on the passport signature panel as expected, but rather in the handwriting exemplars requested for comparison (p. 137).

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COMMENTARY

FORENSIC HANDWRITING IDENTIFICATION: IS IT LEGALLY A SCIENCE[1]

A review of court cases which hold handwriting examination to be a science.

by Marcel B. Matley[2]

REFERENCES: Matley, M.B., **"Forensic Handwriting Identification: Is It Legally A Science,"** *International Journal of Forensic Document Examiners*, Vol. 3, No. 2, April/June 1997, pp. 105-113.

ABSTRACT: This Review Paper surveys some of the reported court cases which explicitly held handwriting expertise to be scientific. This is one part of the reply which can be made to the challenge exemplified in the *Starzecpyzel* ruling to the contrary. Reasons which courts gave for considering it scientific provide guidelines for professional practice. Further surveys of court cases could give even more legal support for the acceptance of the expertise as scientific, while supplying means for exposing inadequate expert opinions.

KEYWORDS: Handwriting expertise; court cases; *Daubert* Hearing; scientific validity; admissibility

In *U.S. v. Starzecpyzel*, 93 Cr 553 (LMM), 880 FS 1027 (S Dist NY 1995), the now infamous *Daubert*[3] hearing on whether handwriting expert identification is scientifically reliable ended with Judge McKenna declaring it not to be a science at all, but, if it were, it would be junk science.

Was there not a Federal Statute which allowed for the admission of handwriting expert evidence? If so, have the new Federal Rules of Evidence abrogated it, or could one short circuit a requested *Daubert* hearing as to admissibility by citing the statute? It would be interesting to have an attorney discuss that issue. Be that as it may, judging from the reported decision and the transcript of proceedings, the prosecution for its part never gave indication of knowing about the case law which has found forensic handwriting identification to be scientific. Some of these cases are discussed in this paper.

The scope of this paper in limited to a review of some of the reported court cases in which handwriting identification was explicitly ruled scientific, even limiting the discussion to where the court actually employed a form of the word "science." In so doing, the *Starzecpyzel* case will be seen, solely from the aspect of case law, to be a kind of aberration and contrary to a moderately increasing flow of court rulings.

There is no doubt that a hundred or more years ago, and into the early part of this century, many courts considered expert handwriting evidence the most unreliable evidence[4]. And with very good reason, since experts were testifying from the comparison of mere style or form of letters, much as some experts are doing today, even some trained in government apprenticeship programs and members of self-styled prestigious organizations. The pioneers of scientific handwriting expertise fought an up-hill battle to gain respect and favourable rulings from courts of law. Anyone who has read several of Albert S. Osborn's writings on the subject[5] will recall his oft repeated story of the battle and plea for modern reforms. The court citations given here are a tribute to the work of Osborn, Ames, Mitchell, Hagan and other conscientious experts who left us a legacy of integrity and scientific discipline.

These arguments have force even in the narrow-minded concept of science which the *Daubert* court sanctioned and the *Starzecpyzel* court adopted. That concept is so narrow that the handwriting researcher for the defense in the latter case could not have passed a *Daubert* hearing if his scientific skill at critiquing whether another discipline was scientific had been challenged by the prosecution, BASED ON THE VERY CRITERIA HE APPLIED TO HANDWRITING EXPERTISE. Imagine the beauty of a prosecution response demanding a *Daubert* hearing as to whether the defense's scientific challenge to forensic handwriting expertise were itself admissible as scientifically valid under *Daubert*. One could envision layers upon layers of *Daubert* hearings, generating the most collateral of all collateral issues!

The cases to be discussed do not foolishly say any expert handwriting evidence is scientific. Each says that the expert handwriting evidence considered in the instant case was scientific because it met certain criteria. Studying those criteria, one must embarrassingly admit that much expert handwriting evidence today is not scientific; however, that is a long way from simply stating that the expertise itself, *if properly mastered and practised*, is not a science or that all of its practitioners are necessarily unscientific.

The cases cited are not represented as being all that could be cited. This research into the case law has been a one-person effort, although using citations in books and articles as a springboard into the vast ocean of published case law. A select few of the more fruitful springboards are given in below.[6] In addition, as a part-time endeavour, it has not been possible to retrieve all relevant citations

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[1]Received June 26, 1996, accepted for publication October 2, 1996.

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[3]*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 125 L Ed2 469, 113 S Ct 2786 (1993), remand 43 F3 1311 (9Cir 1995).

[4]For example, in *Hardy et al. v. Harbin et al.*, 154 US Appx 598, 22 L Ed 378, 14 S Ct 1172 (Cir CA 1874), at 381 the Court said: "In relation to comparison of handwritings, *i.e.*, where genuine signatures are put in evidence to enable the jury to judge by comparison, Bennett, J., in *Adams v. Field*, 21 Vt., 256, says: 'Those having much experience in the trial of questions depending upon the genuineness of handwriting, will not require to be reminded that there is nothing in the whole range of the law of evidence more unreliable, or where courts and juries are more liable to be imposed upon.' In the present case the evidence of this character is entirely unreliable."

[5]Osborn, Albert S. "Proof of Handwriting," *Illinois Law Review*, Vol. 6, 1911, pp. 334-339. Is a good example of one of his crusading articles for reasonable court rules relative to expert handwriting evidence.

[6]The following are some of the sources that were employed as springboards into that vast ocean of published court cases:

a) The various series of *American Law Reports* have about three dozen case annotations relating to handwriting and document examination. Each provides extensive case citations with commentary.

b) Scott, Charles C., "Law and the Sciences of Questioned Documents in Kansas," *Journal of the Kansas Bar Association*, Vol. 29, August 1960, pp. 14-29.

c) Baker, Jay Newton, *Law of Disputed and Forged Documents; Cases; Illustrations*, Michie, Co., Charlottesville, VA, 1955. Reprinted 1971.

d) Osborn, Albert S., *Questioned Documents*, 2nd ed., Nelson-Hall, Chicago, 1978. Reprint of 1929 ed., Patterson Smith Publ., Montclair, NJ. Pages 703-995, "Citations."

e) Sulner, Hanna F., *Disputed Documents; New Methods for Examining Questioned Documents*, Oceana Publ., Dobbs Ferry, NY, 1966.

which have been gathered. Only those actually read are included. Nor has there been time to "Shepardize" fully the cases discussed, thus reliance on these cases by other courts remains to be fully explored. Last of all, the review was restricted to U.S. Federal and State cases, although other English-speaking countries could offer rich citations, as did courts in India early in this century as reported by Hardless.[7]

The cases are arranged chronologically.

1. *Folkes v. Chadd*, 3 Doug 157, 99 ER 589 (1782), affirmed 3 Doug K.B. 340, 99 ER 686 (1783).
   Reference is made to the report 99 ER 589.

This was an action over whether a long-standing bank should be removed as contributing to the silting of a harbor. A Mr. Milne was called as expert by one side. The other side said that was surprise testimony and they should be permitted opportunity to call their own expert.

At page 590 the Court stated: "On the motion for the new trial, the receiving Mr. Milne's evidence was not objected to as improper; but it was moved for on the ground of the evidence being a surprise; and the ground was material, for, in matters of science, the reasonings of men of science can only be answered by men of science. . . . Under persuasion of this being right, the parties go down to trial again, and Mr. Smeaton is called. A confusion now arises from a misapplication of terms. It is objected that Mr. Smeaton is going to speak, not as to facts, but as to opinion. That opinion, however, is deduced from facts which are not disputed. . . ." In explaining how the opinion of men of science was relied on in various fields, the Court gave this instance: "I cannot believe that where the question is whether a defect arises from a natural or artificial cause, the opinions of men of science are not to be received. Handwriting is proved everyday by opinion; and for false evidence on such questions a man may be indicted for perjury. Many nice questions may arise as to forgery, and as to the impressions of seals; whether the impression was made from the seal itself, or from an impression in wax. In such cases I cannot say that the opinion of seal-makers is not to be taken."

In our modern arrogance we have so defined "science" that we must logically conclude that there was no science until, in the later twentieth century, men such as Mr. Stelmach invented and settled on their narrow definition of what makes science. This narrow definition has been ill-advisedly adopted by courts such as *Daubert*. Given such a premise, the unwitting and unarguable inference is that the courts themselves are not merely unscientific, but anti-scientific in the very methods by which courts must necessarily make their findings. Yet past illustrious geniuses did not conduct experiments which were published in peer-reviewed journals and which were replicated by many others; nor did they require the approbation of establishment circles before knowing what they knew and being right about it, which Mr. Stelmach and Mr. Saks claimed handwriting identification must have to merit their consideration.

2. *Smith v. Rankin*, 20 IL 14, CJ 22, 953 (1858).
   Reference is made to the report 20 IL 14.

This case does not consider the scientific nature of document examination, yet I could not resist including it, because it does remark on the scientific nature of forgery. In an action regarding ancient deeds, at page 20 the Court explained why ancient deeds required more scrutiny than previously: "Great weight, formerly, with much propriety, was attached to the appearance of the document, denoting its real antiquity, but that has ceased to be entitled to any considerable consideration, for it is well known that modern chemistry will, in a single day, produce a paper having every appearance, both in texture and writing, of the greatest antiquity. When we remember that skill in forgery has kept pace with the rapid advance in arts and sciences which is peculiar to our own times, and that the integrity of mankind is not a whit improved with the improvement of the age, we are solemnly admonished that increased vigilance is necessary to protect the public against the designs of those who are capable of committing crimes."

3. *Frank et al. v Chemical National Bank*, 37 NY Sp Ct (5 J&S) 26 (1874); affirmed 45 NY Sp Ct (13 J&S) 452 (1879); affirmed 84 NY 209 (1881).

This was an action to recover money deposited with defendant and alleged to have been paid out on forged checks. Plaintiff maintained that his bookkeeper had forged more than 30 checks and absconded before discovery, first destroying or concealing all but three of the forged checks. Joseph E. Payne, plaintiff's handwriting expert, had testified to "all the little *indicia* of simulation," [emphasis in original] demonstrating them with enlarged photographs otherwise in evidence before the court, and he had said that the checks were definitely forged. Under the common law rules, although the testimony of the physical, observable evidence of forgery was properly received, it was error to permit a direct expert opinion as to the fact of forgery, and so the case was remanded for a new trial.

In the first hearing before the Superior Court, 37 NY Sp Ct (5 J&S) 26, at page 31 the Court discussed prior cases and concluded: "It seems to accord with the views of the courts, that witnesses may describe all the facts in respect to the condition and appearance of the paper and handwriting, and that, as to those matters which require special skill and scientific research to discover, and explain, an expert may be called upon to testify. There appears to be no disposition to restrict the placing before the jury of all the material facts, and the opinions of experts upon those matters, which science and art tend to elucidate. . . ."

At page 32, after summarizing the evidence of forgery, the Court continued: "[I]n addition there was the testimony of the expert, Mr. Payne, which it is impossible to carefully examine, without being impressed by the extent, the minuteness, and the relevancy of his illustrations, and the force of his opinions and conclusions. They seem to indicate, that skill, and the resources of sciences, are destined to discover forgery, with a certainty but little short of a mathematical demonstration." This quote inspires two questions. The first has already been asked: Was there no science prior to the narrow-minded concept of science invented in the late 20th century and adopted by the *Daubert* court? Second, besides the remarkable good sense which this 19th century court exhibited in this decision, was there some special reason for their excessive love of employing commas?

The quote given from page 32 can well serve as the handwriting expert's vade mecum when going to court. How contrasting to opinions of experts who, when hired to defend false writings, dismiss all differences as "normal variation" and, when hired to attack genuine writings, assert that all differences are "subtle and fundamental."

[7]Hardless and Hardless, *Forgery in India; A Practical Treatise on the Detection of Forgery Dealing with the Languages of India ...*, The Sanctuary, Chunar, India, 1920. As one example, on page vi in the appendix ("Extracts of Judgements," pp. V-xiv) the authors, a father -son team of handwriting experts, quote the Court in *Crown v.Madho Singh* as saying: "Mr Hardless has very ably explained his scientific principles for the identification of writings."

Later at page 34, while up-holding the use of photography and optical instruments in court evidence, the court drove the same point home: "The administration of justice profits by the progress of science, and its history shows it to have been almost the earliest in antagonism to popular delusions and superstitions." Unfortunately, the *Daubert* Court, and the *Starzecpyzel* Court in its wake, adopted the new superstition that a fairly recently formulated kind of scientific experiment is the sole test of what is scientific knowledge, and these courts adopted the new delusion that this one kind of scientific experiment alone can yield scientific simulacrum of truth. The term "simulacrum" is used because the decision did not take any exception to Mr. Stelmach's position that science never really knows anything, only muddles around finding out that what has been found out is not quite ever worth definite belief, being always subject to modification or dismissal. Yet the validity of this theory about this sole method for determining scientific validity was never itself validated in published and replicated research, such as it itself requires of all other theories of science. The *Frank* Court, if it rose from the dead, would surely shake its hoary head in wonder and bewilderment at the new turn in forensic science rulings.

At the second trial, 45 NY Sp Ct (13 J&S) 452, with the judge sitting as fact-finder, defendant lost once more. In the second appeal to Superior Court, defendant contended that it was error for plaintiff to provide the judge with a magnifying glass so that he could study the original checks closely in making his factual determinations. It was held that the judge in that situation had the same rights and duties a jury would have, and thus his use of a magnifying glass in his deliberations, after testimony was closed, was proper. In 84 NY 209 all the lower courts' judgements were affirmed.

4. *Boyd et al. v. Gosser*, 78 FL 64, 82 S 758 (1918), different results reached on rehearing 78 FL 70, 82 S 759, 6 ALR 500 (1919).
   Reference is made to 82 S 759.

Gosser had brought suit to enforce specific performance of two contracts alleged to have been signed by decedent W. T. Boyd. At trial, expert handwriting evidence as to forgery of Boyd's signature could not prevail over the testimony of "credible" attesting witnesses. Upon appeal, the Supreme Court of Florida up-held the trial court's findings and order. Upon rehearing, the Supreme Court reversed itself, saying at page 759: "[T]he error in the conclusion arrived at upon the first hearing consisted in treating the testimony of witness William J. Kinsley, the expert on handwriting, as merely opinion evidence.

"It was something more than the mere opinion of the witness. It was a detailed statement of facts relating to the questioned signature of W. T. Boyd which was appended to the two documents; facts which were revealed by the use of mechanical instruments and scientifically established to the degree of demonstration. These facts we deem to be wholly irreconcilable with the evidence of witnesses who testified to the genuineness of W. T. Boyd's signature, which testimony, although apparently credible, is not by any means indubitable when considered in the light of the facts established by the scientific investigations of the expert on handwriting. When so considered this 'apparently credible positive evidence' loses much, if not all, its character, and 'if the salt hath lost his savor wherewith shall it be salted?'"

At page 760 the Court gave an excellent summary of handwriting characteristics the expert should consider and of the compelling evidence that Boyd's signature on the disputed contract was a tracing. Other courts had recognized that the close similarity of two signatures indicates the high probability of a tracing. The Court also recognized that the nature of writing makes for differences in the same person's signatures, expected differences which were absent from the disputed signatures.

At page 761, discussing the relative merits of the testimony of purported attesting witnesses versus Kinsley's expert testimony, the Court said: "So we have in this case upon the one side the law of mathematical probabilities, and upon the other the law of moral probabilities. . . .

"In the use of demonstrative evidence one relies upon the evidence of his own senses. It is therefore evidence of the highest rank. It is the ultimate test of truth."

The Supreme Court had before it the photographs and other demonstrative evidence given by Kinsley. So the Court had as evidence its own sense perception in addition to "the mathematical law of probabilities as well as the common experience and knowledge of man." Throughout the decision, Osborn's "Questioned Documents" was cited with approval several times.

5. *Rolland v. Porterfield*, 183 CA 466, 191 P 913 (1920).
   Reference is made to 191 P 913.

Defendant's handwriting expert testified that a purported promissory note on the back of a photograph had decedent's genuine signature placed there ten years earlier than the note itself, which was admittedly in the hand of the plaintiff. The Supreme Court of California considered the handwriting expert testimony to be scientific evidence both by applying to it the rules for reception of such evidence and by referring to the expert's evidence in this case as scientific.

At pages 914-915 the Court stated both views: "In behalf of defendant a handwriting expert testified, giving in full the reasons upon which his opinion was based, that the words above italicized [decedent's signature] could not have been written on July 13, 1917, and that they had in his opinion, been written approximately ten years ago. In derogation of this testimony appellant cites the statement in Grigsby v. Clear Lake Water Co., 40 Cal. 405, to the effect that expert witnesses 'are generally but adroit advocates of the theory upon which the party calling them relies, rather than impartial experts, upon whose superior judgement and learning the jury can safely rely.' Whatever the individual opinion as to the value of expert testimony, it has been clearly settled in this state that, as regards the preference or weight to be given the testimony in any particular case, the law makes no distinction between expert testimony and evidence of other character, and that, when there is a conflict between scientific testimony and testimony as to the facts, the jury, or trial court, must determine the relative weight of the evidence. [Case citations omitted.] Moreover, the note itself, which was offered and received in evidence, affords, by reason of the relative position and condition of its parts, intrinsic evidence amply sufficient to warrant a person, even in the absence of any scientific testimony on the question, that the name of decedent and the words 'July 13' were written on the back of the photograph before the rest of the writing was placed thereon."

6. *In re O'Connor's Estate, O'Connor et al. v. Slaker et al.*, 105 Neb 88, 179 NW 401, 12 ALR 199 (1920), certiorari denied 256 US 690, 65 L Ed 1173, 41 S Ct 450 (1921), writ of error dismissed 257 US 610, 66 L Ed 395, 42 S Ct 47 (1921).
   Reference is made to 12 ALR 199.

The probate court found the will of John O'Connor to be a forgery. In a bench trial in district court the will was sustained as genuine. The key question the Nebraska Supreme Court had to decide was whether expert handwriting evidence could overcome the

otherwise un-impeached testimony of alleged attesting witnesses. A prior will proffered as that of the same decedent had been found to be a forgery.[8] O'Connor had died a moderately well-to-do bachelor, and upon his death many came forward as his relatives and heirs, although none of them were previously known to his neighbours and acquaintances. He was far more loved and claimed in death than he had been in life.

Wallace O. Shane, a bank teller, was handwriting expert for contestants, and the scope of his testimony should shame many who speak disdainfully of any bank employee as handwriting expert. At page 205 some of his detailed reasons are given, covering cramped position of the hand, tremor of old age, proportions, alignment of base line, slant and connectives. One genuine signature and the disputed signature are reproduced. Osborn, referred to as "an immanent (sic) author," is quoted from his "Questioned documents," p. xxiii: "The real expert, . . . when guided and assisted by the competent lawyer, will make the facts themselves testify, and stand as silent, but convincing, witnesses, pointing the way to truth and justice." Case citations are given which assert this viewpoint.

This teaches us that the expert is not to be believed simply because he said it, or has this or that membership or paper certificate, or went to this or that course or training. Only an expert opinion based on credible and clearly explained reasons deserves to be accepted.

At page 206 the Court discussed the testimony of Charles G. Lane, a bank president. He had seen the decedent sign his name many times, and gave convincing reasons why the disputed signature was forged. Among these was that the apostrophe in the will signature was made from top down, while the genuine signatures had it from bottom up! The Court was particularly impressed with this point. Lane's testimony was considered to be expert as well as from personal knowledge.

When comparing the above to the expert testimony on the other side, the Court noted at page 207 that "all of such testimony on behalf of proponents, though entitled to consideration, lacks weight for want of cogent reasons, when the expert proof of forgery is considered from the same standpoint." The observations of contestant's experts were things the Court could observe for itself, and it said of them: "Silent circumstances without power to change their attitude, or to make explanations, or to commit perjury, may speak as truthfully in court as animated witnesses. . . . If the truth is found in oral testimony, it must determine the issue, but it is equally potent if found in circumstances. . . ."

Headnote 3 pithily states the value which the Nebraska Supreme Court placed upon expert handwriting evidence in this case: "The mere opinion of witnesses who testify alone from familiarity with a signature and from comparing genuine and disputed writings has less weight generally on the issue of forgery than expert opinions, based on scientific skill and sound reasons."

7. *State v. Gummer*, 51 ND 445, 200 NW 20, rehearing denied 200 NW 37 (1924).

Reference is made to 200 NW 20.

In a rape and murder case, prosecution proved by expert handwriting evidence that a name on a hotel registry was of a fictitious person and made by the hand of an acquaintance of defendant. At trial extraneous exemplar writings by the acquaintance were admitted for purposes of comparison. At page 36 the Supreme Court of North Dakota discussed the old common law rules on admission of extraneous exemplars and of expert handwriting evidence. The Court explained why changes from the old rules were made: "The study of handwriting has become a scientific matter, and with modern theories as to individual characteristics as expressed in handwriting and the scientific means for measurement and demonstration that have been devised the status of handwriting evidence has wholly changed. . . . It is another case of the growth and progress of the law to meet modern requirements."

If such retrogressive rulings as in *Starzecpyzel* gain sway, courts will have reverted to meeting the ancient requirements of forgers and perjurers.

8. *Adams v. Ristine*, 138 VA 273, 122 SE 126, 31 ALR 1412 (1924).

Reference is made to 122 SE 126.

In a trial involving the authenticity of a will, Albert S. Osborn was expert for contestants, while bankers appeared for proponents. The case addresses several important issues in handwriting testimony; for example, this is a landmark case regarding the admissibility of enlarged photographs to demonstrate expert observations.

The Supreme Court of Appeals of Virginia implied that it considered the testimony of a handwriting expert as scientific when it said at page 129: "The line of permissible cross-examination of the non-expert witness is not altogether as extensive as that of the expert, but the same principle is involved, and the trial court must exercise its discretion as to how far it may be carried. Mere abstract questions or questions involving scientific knowledge, as a general rule, would not be permissible, but questions involving the extent of his knowledge or observation, are permissible."

At pages 132-133 the court explicitly states that it considered Osborn a scientific witness: "The photographs were shown to be correct copies of the originals, and no question is raised as to this. The photographs were not offered as original evidence, nor as substitutes for original evidence, but 'for the purpose of demonstrating the reason for the opinion which Mr. Osborn had expressed.' Mr. Osborn was a scientific expert on handwriting introduced by contestants. The objection to the book of photographs was, not because of any use of it on cross-examination of proponents' witnesses, but because of the grouping and the character of the grouping, and to the use of it by Mr. Osborn, who made it, because of the undue prominence thus given to his testimony, and the tendency 'to minimize other testimony and other writings in the case,' and because of undue surprise."

Would that more proponents of forged documents find "undue" the demonstration of the truth to courts of law and be unduly surprised when that truth prevails.

9. *Magnuson v. State*, 187 WI 122, 203 NW 749 (1925).

Reference is made to 203 NW 749.

Although this case report does not use a form of the word "science" in referring to the expert handwriting evidence, in *Dietrich v. State*, which is discussed next, the handwriting and document evidence in *Magnuson* is referred to as scientific. Defendant Magnuson was appealing from a conviction for murder by means of sending a bomb to an official, who was killed along with his wife. The Supreme Court of Wisconsin ruled that writings made voluntarily after arrest were properly used as exemplars for comparison with the address on the bomb package.

Experts for the prosecution were John F. Tyrell, Albert S.

[8] *In re O'Connor*, 101 Neb 617, 164 NW 570.

Osborn and Jay F. Wood. W. W. Way of Milwaukee, defense expert, was so impeached that his testimony strengthened that of the other three. Among the evidence, which the three prosecution experts developed from the remnants of the bomb package and which tied defendant to it, were habitual misspellings in the address, ink analysis showing identical inks were used on the bomb package and by Magnuson's daughter, and glue and sawdust analysis.

At page 754 the Court said: "A rule of law that permit an expert to take the stand and state his conclusion without doing any more would place the least qualified, most prejudiced expert on the same level as the best qualified and most conscientious expert. Particularly this is true in regard to the testimony given by a handwriting expert, which rests very largely for its convincing power upon the similarities and peculiarities which enable the expert to arrive at his conclusion."

10. *Dietrich v. State*, 203 NW 755 (WI 1925).

Ms. Dietrich was convicted of adultery for hire and she appealed. The Supreme Court of Wisconsin found that the evidence not only gave "a strong, 'robust' doubt, stronger than a reasonable doubt" of her innocence, but that it clearly proved that she was abducted and raped by her accusers.

At page 759 the Court stated the manner in which the prosecution should have investigated the case, and offered an outstanding example of scientific investigation: "We have expressed our approval in the case of Magnuson v. State, 203 NW 749, reported herewith, of the highly scientific and enlightened experiments resorted to in order to prove the defendant's guilt in that case. The case last referred to sets a standard which it would be well for all prosecuting attorneys in important criminal cases to emulate." So by 1925 not only had expert handwriting evidence achieved recognition for its scientific quality, but it had set a high standard for other forensic investigations to imitate.

11. *In re Creger's Estate, Brooks v. Creger*, 135 OK 77, 274 P 30, 62 ALR 690 (1929).

Reference is made to 62 ALR 690.

The trial court favourably ruled on a purported holographic will. The Oklahoma Supreme Court reversed the judgement, directing that the will be set aside. All writings in the trial were before the Supreme Court which made its own comparative examination in reviewing the record of handwriting testimony.

At page 696 the Court gave specific observations from handwriting on the will to show falsity: Using different form of name for other people than deceased used elsewhere; different spellings of words; "my" written by a good penman not yet middle aged; new rather than old style "a"; and final "s" connected to the next word.

At page 697 the Court evaluates the expert evidence as to genuineness: "We have carefully considered the testimony of the experts or purported expert witnesses, that is, business men who gave testimony that in their opinion the instrument offered for probate was in the handwriting of the deceased. An analysis of this testimony so confidently relied on by the proponent of the will reveals the principal witness based his conclusions solely on the features of form of the writing, and that he gave no credit to unaccustomed spelling and the use of unaccustomed names in the instrument. This witness drew his conclusions solely on the similarity of the script or the general form of the handwriting with his recollections of the handwriting of the deceased. Two of these witnesses were a variety of the expert on handwriting; that is, they were bankers or bank tellers in small towns. We are by no means deprecating the value of expert testimony to prove handwriting. In the notable case of Baird v. Schaffer, 101 Kan. 585, L.R.A. 1918D, 638, 168 Pac. 836, from the Supreme Court of Kansas, which we have cited on another point, a bold forgery of a will was prevented from taking its intended spoils by giving due and proper credit to expert and opinion evidence in regard to the genuineness of handwriting. But this expert and opinion evidence must always bear the qualification given it as a result of recent scientific investigation. . . ." There then followed an extensive quote from Albert S. Osborn's "Problems of proof" to the effect that the weight given expert handwriting testimony is from the reasons adduced to support it and from clear demonstration of its observations.

12. *Roberts v. Davis*, 5 Div 199, 230 AL 272, 160 S 718 (1935).

Reference is made to 160 S 718.

At page 720 the Court summarized the issue which concerns us: "Some expert evidence was offered by plaintiff tending to show the signature to this mortgage was by the same hand as signatures to other documents proven or admitted to be the genuine signatures of the alleged mortgagor.

"In qualifying expert witnesses, the trial court took the view that the witness must have studied comparison of handwritings as an art, or science, as distinguished from practical experience in course of business."

The Supreme Court of Alabama was quite critical of more than one action by the trial court. Although it did not state approval of the idea that comparison of handwritings could be studied as a science, neither did it indicate such a view was mistaken.

13. *In re Young's Estate*, 347 PA 457, 32 A2 901, 154 ALR 643 (1943).

Reference is made to 32 A2 901.

The Supreme Court of Pennsylvania upheld a jury verdict that a purported will did not bear decedent's genuine signature. Appellant argued that the positive and direct testimony of attesting witnesses should prevail over expert evidence. The Court disagreed, finding that the testimony of handwriting expert M. A. Nernberg that the will signature was a forgery was most convincing.

At page 903 the Court quoted Wigmore: "Wigmore on Evidence, 3d Ed., Vol. IV, sec. 1302 (clause 3) says: The testimony of the attesting witnesses is of course not conclusive in favor of execution even when all agree and when no personal impeachment is attempted. * * * The unanimous testimony of the attestors may fail of credit even though the only opposing evidence is that of the alleged maker's handwriting as analysed by expert witnesses. The circumstantial evidence afforded by the handwriting may in a given case be more convincing than the testimony of the attesters. This possibility is one of the results of the modern scientific study of handwriting."

As we are all aware, Wigmore and Osborn worked jointly to put expert handwriting testimony on a sound legal and scientific footing. If we were to accept the opinion of the defendant experts in the *Daubert* hearing of *Starzecpyzel*, we would not only have to say that neither handwriting expertise nor the so-called scientific criticism of it offered by those defense experts was scientific, but that there was no science in the entire history of the human race until one or both of two events transpired: (1) The specific scientific investigation technique Stelmach described was fully developed and (2) he and Saks were available to pass judgement on anyone claiming to be scientific. That proposition, of course, is utterly ridiculous and hardly tempts one to consider it scientific.

14. *Boyer v. United States*, 40 A2 247 (Ap DC 1944).

In a prosecution for obtaining money and property under false pretenses, the defense wanted a jury instruction on expert handwriting evidence to include this sentence on its value: "It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence." It was taken from an 1874 case, *Cowan v. Beall*, 1 MacArthur 270. The trial court refused to include the sentence in its jury instructions, and defendant included the refusal as one of the errors assigned on appeal.

At page 250 the Municipal Court of Appeals for the District of Columbia stated the reason why the trial court's refusal was not error: "Whether such language was justified seventy years ago we cannot say, but the modern trend certainly is to recognize the value of testimony of handwriting experts and we do not feel such language is justified today in view of the advance made in the scientific study of handwriting."

15. *People v. Horowitz*, 70 CA Ap 2 675, 161 P2 833 (1945).

Reference is made to 161 P2 833.

In a prosecution and conviction of forging a will, causing a forged will to be filed and offering a forged will into evidence, John L. Harris and Clark Sellers testified for the State. The District Court of Appeal considered their testimony to be "upon a subject requiring scientific knowledge." The following quotes indicate the extent and depth of their scientific testimony.

At page 840 the Court of Appeal summarized their testimony: "Messrs. John L. Harris and Clark Sellers, experts on questioned documents, gave testimony that four changes had been made in the attestation clause; that the 40 lines comprising the will were written after the paper had been folded, albeit the letter *H* in the name of the testatrix was written before the paper had been creased; that 'Esther Horowitz' was the first writing on the paper containing the will; that it was subsequently folded and the body of the will was written in above the name of the testatrix. Beneath the words of the will are the names of Maria Matus and Emma Cordova as attesting witnesses. Both experts opined that the will was written at three different times and in the following order: the signature, the body of the will, the names of the witnesses. Both gave candid and complete technical explanations for their conclusions." [Emphasis in original.]

At page 841 the Court of Appeal considered the objection to their being permitted to testify: "His [defendant's] attack is made upon the handwriting experts who were allowed to testify to conclusions which he says should have been drawn by the jury. He contends that their qualifications lacked a knowledge of the chemistry of ink. The qualification of an expert to testify upon a subject requiring scientific knowledge is committed to the sound discretion of the trial judge. It is not restricted by any specified limitations in determining such qualifications and the exercise of its discretion will not be disturbed except when it is shown to have been abused. [Case citations omitted.] If the witness exhibits an unusual skill and knowledge gained from study and experience not possessed by the man on the street he is competent to give an opinion."

It is interesting that the Court did not even bother to comment on the allegation that the experts lacked a knowledge of the chemistry of ink. Even the most knowledgeable among us lacks knowledge of some topic related to document examination in general or handwriting expertise specifically. Some experts in an effort to make themselves appear superior to others tout some specialized piece of equipment rarely applicable, if used in a technically and ethically correct manner. Or an attorney may challenge the examiner by asking about an esoteric detail he himself cannot pronounce unless struggling over his written notes, all in an effort to prove that the examiner does not know the millions of other things which have been mastered. The expert, of course, will intelligently reply: "I did not refer to or rely on such a thing in this case, since it has no relevancy. If some expert charged you for doing such work or for advising you to ask such a question, that expert is either lacking good technical judgement or proper ethical values."

At page 841 the Court indicated the value of handwriting expert testimony: "The equipment, training and experience of the expert on forged documents makes of him a special functionary for the illumination of facts which are not readily discernible by the non-expert. While the character of a handwriting may be distinguished by a peculiarity in the formation and union of letters, it is not readily noticeable by the non-expert; yet when analyzed by one who has devoted years to the study of questioned documents such character may be quickly determined, and from his conclusions it may be established that a writing imputed to another may be shown to have been forged and the alterations or changes in a document may be made clear to the untrained eye."

At page 846 the Court gives what can be taken as a judicial cheer for forensic expertise: "The stupid follies committed by persons about to embark upon crime are not unthinkable — to the actors. Possession of the knowledge that criminals undertake such ill-conceived ventures is the factor that enables the crime detector at the threshold of an investigation to suspect and even to reenact the successive steps of the offence of which the accused is suspected."

16. *People v. McDaniel*, 321 P2 497 (CA Ap 1958).

Police expert, Mr. Sloan, who had testified at the preliminary hearing that defendant had not written two checks, was on vacation when time came for trial. Another police expert testified instead. The second expert, K. L. Woodward, disagreed with the first and said defendant had written those two checks, but neither the trial court nor the District Court of Appeal considered that defendant was prejudiced by not having Sloan available to provide exculpatory testimony, a ruling surely to inspire head scratching. Woodward also testified that defendant signed cards from previous convictions which he had denied signing.

At page 503 the Court of Appeal addressed one of appellant's contentions: "The next point to be considered is the insufficiency of the evidence to support the two convictions of forgery. In this connection, defendant argues that there was no evidence that he was the person who presented the checks to be cashed and that the identification of his handwriting on the endorsements rests upon the 'unscientific' opinion of Mr. Woodward. The argument is without merit." It is a fair assumption that putting "unscientific" in quote marks and saying the argument had no merit indicated that the Court considered the expert handwriting testimony to be scientific.

17. *Nelson et al. v. Nelson et al.*, 249 IA 68, 87 NW2 767 (1958).

Reference is made to 87 NW2 767.

Heirs established their right to inherit by means of expert handwriting examination of old documents which established the identity of the grandparent through whom they claimed relationship to decedent.

At page 769 the Supreme Court of Iowa said this of the expert handwriting evidence: "The witness, M. D. Huffman, explained in detail how he reached these conclusions. He was extensively cross-examined.

"The reasons given in support of Huffman's conclusions are quite persuasive. The facts shown in support of the conclusions must be deemed substantive evidence rather than mere expert opinion." The Court made its own comparison and agreed with Huffman.

Addressing the argument that courts had made deprecating comments about handwriting expertise in the past, at 770-771 the Court concluded: "Further, it is well known that the science of comparing handwriting by microscopic study of enlarged photographs and otherwise is much further advanced today than it was 80 years ago. We recognized this advance in Keeney v. De La Gardee, supra, 212 Iowa 45, 53, 235 N.W. 745, 749, and Brien v. Davidson, supra, 225 Iowa 595, 600, 281 N.W. 150, 282 N.W. 480.

"For all the reasons just suggested it may not be said the testimony of Huffman is of the lowest order or the most unsatisfactory character.

"Cousin v. Cousin, 8 Cir., Iowa, 192 F.2d 377, fully and carefully reviews the Iowa precedents, commencing with Borland v. Walrath and Whitaker v. Parker, both supra, upon the weight to be accorded opinions of experts on handwriting. It concludes such review by referring (192 F.2d at page 383) to 'the changed attitude of the Iowa courts to expert testimony, in the light of the development of the art or scientific examination of signatures. * * * one of the reasons for the low opinion of handwriting experts' testimony expressed in the early cases was the fact that in the early days of the handwriting experts, their opinion was not fortified by or with modern methods of examination and comparisons but consisted almost entirely of the bare statement of the expert's opinion that the signature was genuine or not genuine,* * *.'"

Lest someone think that the early handwriting experts were incapable or unwilling to explain and demonstrate the reasons for their opinions, it should be pointed out that often rules of evidence forbade such intelligent testimony.[9] At other times, experts were not permitted to state their opinion as to genuineness, since that would be a statement of the ultimate fact at issue and an invasion of the province of the fact finder.[10] Most often, the common law prevented the necessary exemplars from being introduced, unless they were already received in the case for other reasons[11] or for fear they might raise collateral issues[12] or confuse the jurors. Such a judicial situation was a forger's paradise.

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[9]*Kendall's Ex'rs. v. Collier,* 79 KY 446, 30 SW 1002 (C) (1895). The trial court did not permit the lay and expert handwriting witnesses to state to the jury the reasons for their opinions nor point out the discrepancies which caused them to say the questioned writing was a forgery.

[10]Even as late as 1968, *Corn v. State Bar of California,* 68 CA2 461, 67 CA Rptr 401, 439 P2 313, found it necessary to cite an earlier case, *People v. Polk,* 61 CA2 217, 37 CA Rptr 753, 390 P2 641, to the effect that an expert opinion is not inadmissible merely because it coincides with the ultimate issue of fact.

[11]*Campbell v. Campbell,* 215 SW 134 (C) (TX Civ Ap 1919). At page 138 the common law rule was stated as it still prevailed in Texas at that time: "Whatever may be the rule in other jurisdictions, it is the rule in this state that extrinsic documents, not filed in the case or relevant to any issue, are inadmissible as standards of comparison."

[12]*Doe d Mudd v.Suckermore,* 5 Ad & El 703, 7 L.J.Q.B.N.S. 33 (1837). Apparently this was the first case to exclude all exemplars not in evidence for other purposes. The reasons why were: 1) Ignorance of jurors, who mostly could not read or write; 2) Danger of fraudulent selection of exemplars; 3) Danger of raising collateral issues. None of the three need be proved present in any given case; the mere possibility was enough. Exemplar writings already admitted in the case for some other purpose were permitted, since comparison by the fact finder could not be avoided anyway.

Later at page 771 the Court asserted what we have already seen that other courts had asserted: "The authorities seem generally to agree that the weight to be given opinions of handwriting experts depends largely upon the clearness with which they demonstrate the correctness of such opinions. This, we think, is the proper view." Would that it were today the sole and proper view for giving weight to expert handwriting evidence. Too often judges opt out of the work required in assessing intelligent and clear demonstrations of reasons for expert opinions by simply settling on some easily observed formation or noting that one expert, unlike the other, had an additional course or two.

18. *People v. Graves,* 64 CA2 208, 49 Cal Rptr 386, 411 P2 114 (1966).

Reference is made to 64 CA2 208.

Exemplars taken after arrest without advise of right to have counsel present were admissible, since the police did not elicit incriminating statements. It was not inquisitorial. Criminologist Williams of the San Francisco Police Department examined the allegedly forged checks and defendant's exemplars.

In rejecting defendant's argument regarding right to counsel while providing exemplars, the California Supreme Court stated at page 211: "Accordingly, we find no support in *Escobedo* for invoking the right to counsel to block scientific crime investigation. Reliance on handwriting exemplars for expert analysis is not a substitute for thorough scientific investigation of crime but an excellent example of such investigation." The full citation for *Escobedo* as given in the case report is: *Escobedo v. Illinois,* 378 U.S. 478 [84 S. Ct. 1758, 12 L. Ed.2d 977].

This reminds us of the statements regarding expert handwriting evidence made by the Supreme Court of Wisconsin in *Dietrich v. State* discussed above.

19. *United States v. Acosta,* 369 F2 41, (4 Cir 1966), certiorari denied 386 U.S. 921, 17 L Ed2 792, 87 Sup. Ct. 886 (1967).

Reference is made to 369 F2 41.

Conviction on the basis of handwriting expert opinion alone was upheld. At page 42 the Court said: "On its face, the document examiner's opinion is a firm foundation for the finding of guilt. Handwriting identification can be as certain and dependable as another identification. While handwriting analysis may not be as scientifically accurate as fingerprint identification, it is, on the whole, probably no less reliable than eye witness identification which is often made after a quick glance at a human face. Naturally, when the record fails to furnish independent corroboration of the guilt, the fact finder should receive the handwriting testimony with heightened caution, but it cannot be said as a matter of law that such testimony, coupled with the trial judge's own observation of the exhibits, may in *no* event be found sufficiently persuasive." [Emphasis in original.]

The court decision has a nice balance between caution and an acceptance based only on clear and persuasive testimony. Later at 43 the Court describes how "the expert took pains to support his statement concerning the common authorship of the forged endorsements and the samples of defendant's handwriting, by citing in detail the reasons for his opinion." The unnamed document examiner from the Treasury Department was a bit too cocky, claiming near infallibility, but his conscientious testimony carried the day.

In a footnote the Court quotes 4 Wigmore, Evidence §1302 (3rd ed. 1940) as to the "modern scientific study of handwriting." In another footnote Lavay, Disputed Documents 81 (1909)[13] is quoted.

That was the book about which I believe it was Ordway Hilton who quoted a book reviewer regarding another work: "It is a book both original and good; unfortunately what is good is not original and what is original is not good."

Most likely inspired by the expert's self-conceit, another opinion of the Court is summarized in headnote 3: "To qualify as a witness, the expert is not required to prove that he has achieved a record of perfection."

20. *United States v. Green*, 282 F.Supp. 373 (S.D. IN 1968).

This was a prosecution for filing false and fraudulent claims with the United States. At page 374 the U.S. District Court addressed the defense argument that in *Gilbert v. State of California*, 388 U.S. 263, 87 S.Ct. 1951, 18 L.Ed.2d 1178 (1967), defendant gave exemplars voluntarily, and, therefore, the Fifth Amendment exception in *Gilbert* did not apply in the instant case which involved compelled exemplars. The Court said: "In addition to the absence of an effective waiver, defendant contends that the giving of handwriting exemplars where the corpus of the crime alleged requires proof of the unlawful signatures goes considerably beyond use of a mere 'identifying physical characteristic.' Further, that in view of the scientific certainty which accompanies handwriting analysis, it is 'communicative' as to an element of the crime and is incriminating."

At page 374 the Court quoted *Schmerber v. State of California,* 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966): "To compel a person to submit to testing in which an effort will be made to determine his guilt or innocence on the basis of physiological responses, whether willed or not, is to evoke the spirit and history of the Fifth Amendment."

The Government had plenty of exemplars by defendant, a federal employee for some years, but requested some specifically in the wording of the questioned signature. The Court said that met an exception in *Schmerber* and would make the defendant an unwilling witness against himself.

At page 375 the Court adopted all of defendant's arguments, including the scientific certainty of handwriting analysis, by concluding: "For the foregoing reasons, the Government's motion to require the defendant, Joseph C. Green, to submit handwriting exemplars is hereby overruled."

21. *United States v. Blount*, 315 F.Supp. 1321 (E.D. LA 1970).

This was a prosecution for transportation of forged or falsely made securities. Defendant argued against a prosecution motion for a court order for him to furnish exemplars on the basis that he would be forced to give testimony against himself or forego a speedy trial. The District Court said that since the exemplars would not violate a privilege not to give evidence against himself, there was no question of a trade-off between constitutional rights. An exemplar the defendant had given in another case was not available for use in the instant case.

At page 1323 the Court states the reason why giving the ordered exemplars would not be violative of any right: "Since the procedure for obtaining a handwriting exemplar is benign and scientifically controlled, it would not be violative of due process to require an additional sample when the first sample was taken in a matter before another court and the record in that case does not include a copy of the specimen. Such duplication would not be so shocking as to offend due process unlike Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952), where defendant was compelled to have his stomach pumped."

This would not be the case if one were to fail in following the procedure for taking requested or compelled exemplars, a procedure which in the main is well established and agreed upon by the standard authors. An example of reducing the taking of handwriting exemplars to something akin to stomach pumping is the unreported case where the government document examiner conducting the requested exemplars took the sickly suspect's hand into his and forced her to write in the manner he demanded, the manner in which the disputed writing was made. Another expert rendered an opinion that this sample was deliberately disguised by the suspect. We must assiduously avoid such tactics if we are to maintain dignity and good reputation in our profession.

22. *People v. Michallow*, 607 NYS2 781 (1994).

Defendant had been convicted of aggravated harassment and criminal mischief. A handwriting expert compared graffiti which had been spray painted onto vehicles with defendant's regular handwriting exemplars and identified the former as his writing.

At page 783 the Supreme Court of New York, Appellate Division, ruled: "The court erred in admitting opinion testimony by the People's handwriting expert that spray paint writing on the victims' vehicles corresponded to defendant's handwriting. The People failed to make the threshold showing that comparing handwriting to spray paint writing is scientifically reliable." The error was harmless both because it was not shown that the jury would have found differently if that testimony had not been given and because notes found on victims' vehicles were identified as written by defendant.

The Court did not criticize admission of expert handwriting identification regarding the notes left on victims' vehicles, while at the same time holding that admission of it regarding the graffiti was error. From that we can infer that the court considered the former as having a threshold showing of scientific reliability. However, the prosecution and its expert could have cited both court cases[14] and published papers[15] on the comparison of graffiti to the suspect's handwriting. It is an area in which we can all cooperate in performing high quality and inexpensive scientific investigations.

23. *United States of America; Government of the Virgin Islands v. Velasquez*, 33 V.Is. 265 (3 Cir 1995).

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[13]Lavay, Jerome B., pseud., *Disputed Handwriting; An Exhaustive, Valuable and Comprehensive Work...*, Howard Book Co., Chicago, 1909.

[14]*State v. Kent*, 83 VT 28, 74 A 389, 26 LRA NS 990, 20 Ann Cas 1334 (1909), was a prosecution for murder. The defendant had a habit of carving his initials and other data in places he had been, and this habit was properly received as evidence. Comparison of carved writing at the murder scene with defendant's pencil writings placed him there at the time of the crime. At page 391 the Court discusses why writings made with different instruments may be compared, giving excellent reasoning based on their similarities despite different instruments. An example of the very individualistic writing habits involved is set forth at pages 390-1 where the Court gives an extended analysis of identifying features of punctuation. Defendant was convicted, and the conviction upheld upon appeal.

[15]Ross, June C., "Spray Paint; An Unusual Writing Instrument, " *Journal of the Independent Association of Questioned Document Examiners,* Vol. 1, No. 1, June 1988, pp. 18-23. Also: Lane, Catherine, "Master Pattern in Spray Painting," *Journal of the National Association of Document Examiners,* Vol. 17, No. 1, Spring 1995, pp. 5-14.

Lynn Bonjour, the government handwriting expert, made a very positive impression on the Court of Appeals, as evidenced by several places in the record. Defendant sought to introduce Mark P. Denbeaux as an expert witness as to the limitations of handwriting identification. He is one of the co-authors of the article "Exorcism of Ignorance."[16] The trial court ruled his testimony inadmissible. The Court of Appeals considered both experts as to their admissibility under *Daubert.* At page 276 the Court said Ms. Bonjour was properly admitted under those guidelines for scientific testimony, a ruling in contrast to the *Starzecpyzel* ruling on the same issue. However, in an even-handed ruling, at page 278 the Court stated that Professor Denbeaux should also have been admitted under the same guidelines.

At page 277 some of the questioning of Ms. Bonjour is given. She gave a succinct and very clear outline of the methodology which she followed.

In a footnote at page 279 the Court quotes Ms. Bonjour's estimate of Professor Denbeaux's article cited above: "Ms. Bonjour acknowledged that she had read Professor Denbeaux's law review article, although her critique — 'it's a lot of gibberish' — was less than glowing." However, the authors of that piece seemed to have made it glowing enough to parley it into a sideline expertise, the new field of "Unqualified Handwriting Experts Proving Qualified Handwriting Experts Are Unqualified," which does not require meeting the criteria of science they assert that qualified handwriting experts must meet.

Concluding Remarks

This survey has not been by any means exhaustive of all possible court cases on the scientific nature of expert handwriting evidence, even with the self-imposed restriction of only discussing cases directly employing a form of the word "science." Many cases speak of aspects of expert handwriting evidence which are elements of the scientific process. Courts have used expressions which are the equivalent of scientific certitude, such as saying the expert evidence amounted to a demonstration.[17] The cases discussed have also cited previous cases as supporting the determination that expert hand writing evidence was scientific, just as later cases approvingly cited the cases discussed herein without themselves explicitly stating that the expertise is scientific. By implication those later court cases could be said to have adopted the earlier statement concerning the scientific nature of handwriting expertise. Thus several more papers of the extent of this one could be composed on this same topic.

While handwriting experts can celebrate the recognition which some courts have given to their profession, it must be born in mind the reasons why that recognition was given. For example, testifying experts, who fail to provide clear and compelling demonstration of the factual reasons for their opinion, would not be presenting scientific evidence. Nor would those who base their opinion largely on form or style of letters and strokes, such as type of i-dots and t-bars, flourishes, etc. Indeed, such "experts" are really expert at nothing but earning a good living by passing off incompetence as expertise and superficiality as perception.

The paper began with a reference to *Starzecpyzel*, and it appropriately ends with a reference to *Starzecpyzel.* Judge McKenna's ruling that handwriting identification was not a science, but, if it were, it would be junk science. Certainly the profession can rise to the challenge, because the court cases discussed above prove that examiners have done better, very much better.

Examiners must do two things to prevail in a *Daubert* challenge to their expertise. First, become competently reliable by mastering the long established science of handwriting expertise. Second, go to the local law library and obtain copies of these cases and study them. These cases are a charter and challenge to higher professional competence, as well as ammunition to shoot down any ill-advised attack on the legal acceptability of the discipline. Be assured that those attacks will continue.

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[16]Risinger, D. Michael, et al., "Exorcism of Ignorance as a Proxy for Rational Knowledge; The Lessons of Handwriting Identification Expertise," *University of Pennsylvania Law Review,* Vol. 137, Jan. 1989, pp. Pp. 731-92.

[17]*In re Varney,* 22 F2 230 (E.D.KY 1927), at page 236 the Court goes so far as to say the handwriting expert overdid the compelling demonstration: "My critisim of this witness' testimony is that there is too much learning in it, and it does not present the matter as it appears to a casual observer..... He presented it as things appeared to him after days of study and the use of the instruments which experts avail themselves of in reaching their conclusions. All the results are mixed up together, without any separation of the important from the unimportant. This has made it an extremely difficult job to mast it all; so difficult that I have not undertaken to do this."